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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,094	01/02/2002	John A. Benda	67,007-005; R-4264	8685

26096 7590 10/03/2003

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EXAMINER	
HOFFMANN, JOHN M	

ART UNIT	PAPER NUMBER
1731	

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/039,094	BENDA ET AL.	
	Examiner	Art Unit	
	John Hoffmann	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 August 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *11-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

Claims 11-19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper dated August 8., 2003.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 rejected under 35 U.S.C. 102(b) as being anticipated by Byron 5694502.

See figure 2, and col. 2, lines 1-28 discloses all of the limitations of claims 1-3 and 5.

As to claim 4: there is not indication as to relative to what the fiber is deformed. It is noted that the claim does not require a step of deforming, thus it is improper for the Office to interpret the claim as requiring such a step. It is deemed that the fiber is a deformed fiber preform - it is a stretched preform. Alternatively it is a fiber that is deformed/stretched to be longer and thinner. It is deformed relative to a thicker fiber. It is deformed along all of its locations.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prast 5176731 and Nakai 5996375.

Figures 5 and 4 of Prast disclose directing laser light at two different localities as required by the first two steps of claim 1. However, Prast does not disclose making a grating. Nakai discloses that one can make gratings from optical fibers. It would have been obvious to us the Prast fiber to create the Nakai gratings so that one can precisely control the central wavelength and rejection of the light used in optical systems (see col. 1lines 65-67 and/or to sell them and make money.

Alternatively: Nakai discloses forming of a grating as claimed but does not disclose using two laser beams. Prast discloses an improved method of making fibers, it would have been obvious to modify the Nakai invention, by forming the fibers using the Prast improvement. See col. 1, lines 39-45 and col. 4, lines 31-34 of Prast which discloses at least one improvement.

Claim 2 is clearly met.

Claim 6: see col. 9, line 31 of Prast.

Claim 7: the lasers trace out various patterns including a cross, a square, a "T" and triangles.

Claim 8: the beams originate at the laser; 401/501. It is clear that the laser is "activated". It would have been obvious to set the laser 401/501 in a location and leave it there. This setting would be predetermining its location. The laser 401/501 is a three dimensional object and thus has various "points" (for example, its left most point and its right most point). The laser would be activated when it is at these predetermined points throughout the entire process.

Claim 9 is clearly met.

Claim 10: it would have been obvious to make as many gratings as one desires/needs.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Deacon, Fernald, Bernstein, Kim (2), Berthelot, Digonnet, Lemaire, Oleskevich, Cocito, DiGiovanni and Presby are cited as being relevant to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is 703-308-0469. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 703-308-1164. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

John Hoffmann
Primary Examiner
Art Unit 1731

10-1-03

jmh